

supplement, not compete with other types of protection offered by insurance companies and hospitalization plans.

If you will serve on the Advisory Board, the Foundation will give you the disability protection for yourself without charge. May I send you an outline of the plans to assist you in making a decision?

Yours very truly,

(Signed): _____

Concerning Heart Pamphlets Obtainable from the American Heart Association.

Members who wish copies of the pamphlets referred to should write to California Medical Association, 450 Sutter, San Francisco. In due course, request will then be made for the number of pamphlets needed and these will be sent from the California Medical Association office. Letter follows:

(COPY)

August 27, 1940.

To the Editor:—The enclosed pamphlet, entitled *Standardization of Blood Pressure Readings*, is the result of careful study of the problem by Joint Committees appointed by the American Heart Association and the Cardiac Society of Great Britain and Ireland. Leading medical schools and all of the outstanding insurance companies are adopting this method as a standard procedure for teaching purposes and for keeping their records.

A copy of *Examination of the Heart* is also being sent you.

We are endeavoring to give these two pamphlets as wide distribution as possible and we hope that you will cooperate with us. If you will assume the transportation charges, we will gladly send you, with our compliments, as many of each of the pamphlets as you may wish.

AMERICAN HEART ASSOCIATION, INC.

MEDICAL JURISPRUDENCE†

By HARTLEY F. PEART, ESQ.

San Francisco

Danger of Suit from Failure to Remove Broken Needle

There are a number of cases which have reached the Appellate Courts and others which have not gone beyond the trial court, in which a physician or surgeon has been charged with negligence for failure to remove parts of a needle shaft which has been broken while inserted in a patient's body. Physicians have at times permitted such foreign objects to remain in the body temporarily or permanently where either the condition of the patient would render a surgical operation at the time dangerous or where the needle is embedded in fatty tissue and likely to cause no harm. As to whether or not the facts in any particular situation will, as a matter of good professional practice, justify leaving the foreign object in the body will not be here discussed. The purpose of this article is merely to show what courts and juries have done in such situations.

In a Texas case decided in 1933, a surgeon had broken a needle while making a spinal injection in his patient's back. Removal of the needle would have required surgery, and the physician permitted the needle to remain, feeling that there was little chance that any pain or harm would come to the patient because of the needle's presence in the fatty tissue of the lumbar region. Three weeks later the patient returned, complaining of severe pains in the area and requesting that the surgeon remove the same free of charge. The surgeon refused to operate without the payment of an additional consideration, so the patient had it removed elsewhere. Suit was later brought against the physician for the cost of the removal operation and for

damages for pain and suffering. The jury found that the defendant had not been negligent in permitting the needle to remain in the area during the three weeks' period, but that when once notified that pain existed, was negligent in not removing the needle at that time and was liable for such pain as occurred thereafter. The liability of the defendant was based upon certain expert testimony to the effect that a broken needle in that region of the back should be removed as soon as possible to prevent its moving around, and that one left near the spine might possibly work its way into the spine and cause paralysis. In the particular instance the needle had worked its way nearly an inch from the point of original breakage.

A California case upon which a jury disagreed was based upon similar facts. A patient of very nervous disposition was given a lumbar injection during the course of which the needle broke off at the hilt and was left just under the surface of the skin. The defendant did not feel that it was necessary to remove the object at the time because of the patient's neurotic condition and for a period mentioned nothing to the plaintiff about the breakage. Later he told her of the breakage but stated that in that particular area there was much fatty tissue and little nerve fiber, and that, therefore, the object could remain indefinitely without pain to her. However, after the object had remained in the patient's back for some time, it was removed by another physician and suit was brought for pain and suffering. Expert testimony was presented on both sides; that of plaintiff tended to show that it is always more or less dangerous to leave a needle within the body, since it might work its way to a dangerous area—that regardless of the relatively few nerve centers in that area, there could have been some pain as a result of the foreign object—and, finally, that good practice requires the use of a needle with a protective shield so constituted that the breaking of the needle at the hilt will leave some portion exposed above the surface of the skin to assist removal. Defendant's experts testified that the type of needle used by the defendant was used in many hospitals and laboratories, that it was accepted by the medical profession as satisfactory; that there are circumstances under which it is not negligence to leave a needle within this area of the body. The jury was unable to agree upon the issue of negligence. Thus, although there was expert testimony tending to show that the defendant was not guilty of any negligence, nevertheless, the jury was not convinced of that fact.

Numerous other cases have dealt with the removal or failure to remove foreign objects from other parts of the body.

In one case, after a defendant physician had operated upon plaintiff, another doctor removed a needle from plaintiff's abdomen. The defendant did not deny performance of the operation or that the needle became embedded in plaintiff's side during the operation; however, he contended that plaintiff failed to establish by expert testimony any malpractice on his part. The jury rendered a verdict for the plaintiff on the theory that expert testimony was not necessary to prove negligence under such facts.

In a Washington case it was held that where a needle was broken during the performance of an operation, a verdict could be rendered where it was shown that the defendant had not made an examination of the needle before using the same.

The result of the decisions concerning broken needles makes it necessary to point out to the profession that there are instances in which the physician may be exercising his best judgment as to whether or not an operation should be immediately performed to remove a foreign substance, and yet be held liable for failure to make such removal. This is true because of the fact that the average jury, made up of laymen, is sometimes shocked by facts which to the medical profession cause no consternation.

† Editor's Note.—This department of CALIFORNIA AND WESTERN MEDICINE, presenting copy submitted by Hartley F. Peart, Esq., will contain excerpts from and syllabi of recent decisions and analyses of legal points and procedures of interest to the profession.